

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

JEFFREY FITZPATRICK,

Plaintiff,

v.

HARTFORD LIFE AND ACCIDENT
INSURANCE COMPANY, a
Connecticut company,

Defendant.

Case No. 1404-05420

COMPLAINT

(CIVIL ACTION FOR FINANCIAL
ABUSE OF VULNERABLE PERSON,
BREACH OF CONTRACT, BREACH
OF COVENANT OF GOOD FAITH
AND FAIR DEALING)
(\$272,222)

ORS 21.160(1)(C)
NOT SUBJECT TO MANDATORY
ARBITRATION

JURY TRIAL REQUESTED

GENERAL ALLEGATIONS

1.

On January 17, 2010, plaintiff was a full time, active duty police officer for the City of Sherwood, Oregon, when a vehicle driven by a negligent driver crashed into his patrol car.

2.

Plaintiff sustained multiple injuries in the crash, including a traumatic brain injury, from which he suffers permanent cognitive, psychological, social, behavioral and physiological impairment, and for which he needs ongoing treatment.

3.

On or about January 4, 2011, plaintiff, through counsel, settled his personal injury claim against the negligent driver for the driver's policy limits of \$100,000.

1 4.

2 At all times, plaintiff had his workers compensation carrier's permission to pursue a
3 third party claim against the negligent driver, settle for the driver's policy limits, and disburse
4 the settlement funds.

5 5.

6 Of the settlement, the workers compensation carrier received \$44,444 in
7 reimbursement of its lien, plaintiff's counsel received \$33,333 as attorney fees, and plaintiff
8 received \$22,222 in general damages.

9 FIRST CLAIM FOR RELIEF

10 (Breach of Contract)

11 6.

12 At all relevant times, plaintiff, through his employer, had long term disability
13 insurance under a contract – Policy # GLT-398216 – issued by defendant, Hartford Life and
14 Accident Insurance Company (Hartford), a foreign corporation, organized under the laws of
15 Connecticut.

16 7.

17 At all times, Hartford has done and continues doing business in Multnomah County,
18 Oregon.

19 8.

20 Due to his injuries, plaintiff applied for long-term disability benefits under the Policy
21 because he was unable to work.

22 9.

23 Plaintiff has done everything required of him under the Policy to receive long-term
24 disability benefits.

25 10.

26 Hartford received, reviewed, and accepted plaintiff's application for long-term
disability benefits.

11.

Hartford calculated plaintiff's long-term disability benefit at \$3,198 per month,
effective on or before January 19, 2011.

12.

Hartford only paid plaintiff \$2,272 per month from January 19, 2011 to January 18, 2013, retaining \$926 per month, or \$22,222, the amount plaintiff received from his personal injury settlement.

13.

Despite demand, Hartford retains the \$22,222, and refuses to return it to plaintiff, in breach of contract.

14.

Hartford's taking and retention of plaintiff's personal injury settlement caused both physical and emotional harms to plaintiff, including, but not limited to, prolonged pain and disability resulting from delayed or foregone treatment, caused by Hartford's taking and retention of plaintiff's personal injury settlement.

15.

Plaintiff seeks extra-contractual consequential noneconomic damages in the amount of \$250,000 to compensate him for the physical harm and emotional distress caused by Hartford's breach.

16.

Plaintiff gave proof of loss more than six months ago, as required under ORS 742.061, and is entitled to his reasonable attorney fees under ORS 742.061.

SECOND CLAIM FOR RELIEF

(Breach of Implied Covenant of Good Faith and Fair Dealing).

17.

Plaintiff incorporates the paragraphs referenced above by reference.

18.

At all times, Hartford represented that it had control of the insurance claims process, and plaintiff reposed his trust and confidence in Hartford to exercise and fulfill its duty of good faith and fair dealing in administering and performing the terms thereof.

19.

Hartford breached its duty of good faith and fair dealing to plaintiff, and took and retained his money through systematic and unfair claims settlement practices:

1 a. Hartford made false and misleading statements that it had full discretion to
 2 interpret the terms and conditions in the Policy, and exercised the claimed discretion
 3 unreasonably and arbitrarily to classify plaintiff's \$22,222 personal injury settlement as an
 4 "income benefit."

5 b. Hartford failed to respond to, or act promptly upon receiving, communications
 6 relating to plaintiff's claim, employing a deliberate pattern of harassment and delay to wear
 7 plaintiff down into accepting Hartford's unreasonable and arbitrary classification of his
 8 personal injury settlement as an "income benefit;"

9 c. Hartford failed to conduct a reasonable investigation, based on the information
 10 available, into the nature of plaintiff's personal injury settlement;

11 d. Hartford acted unreasonably and arbitrarily to classify plaintiff's \$22,222 personal
 12 injury settlement as an income benefit for 24-months;

13 e. Hartford acted unreasonable and arbitrarily in failing to credit plaintiff with
 14 reasonable attorney fees for recovering the personal injury settlement from the negligent
 15 driver;

16 f. Hartford unreasonably and arbitrarily required plaintiff to disprove the personal
 17 injury settlement was an income benefit, when Hartford knew, or should have known,
 18 plaintiff would be unable to do so under the Policy and under the facts, knowing as it did,
 19 personal injury settlements, as this one was, are paid in lump sums, without a precise
 20 breakdown, and are non-taxable. Hartford's requiring plaintiff to produce a precise
 21 breakdown of the settlement, when it knew or should have known there wasn't one, was bad
 22 faith and chicanery;

23 g. Hartford wrote, interpreted and exercised its discretion under the Policy to take
 24 advantage of vulnerable people, like plaintiff. This type of chicanery and unfair dealing has
 25 caused or will cause a substantial increase in the number of lawsuits filed against Hartford in
 26 Oregon by claimants like plaintiff.

h. Hartford threatened plaintiff by telling him it would recalculate his long-term
 disability benefits to see if he owed money to them for overpayment if he objected to the
 arbitrary and unreasonable classification of his personal injury settlement as an income
 benefit.

20.

Hartford's systematic breach of the implied covenant of good faith and fair dealing caused both physical and emotional harms to plaintiff, including but not limited to prolonged pain and disability from delayed or foregone treatment, as a result of the breach.

21.

Plaintiff seeks extra-contractual consequential noneconomic damages in the amount of \$250,000 to compensate him for the physical harm and emotional distress caused by Hartford's breach.

22.

Plaintiff is entitled to reasonable attorney fees under ORS 742.061.

THIRD CLAIM FOR RELIEF
(Civil Action for Abuse of Vulnerable Person)

23.

Plaintiff incorporates the foregoing paragraphs by reference.

24.

At all relevant times, plaintiff was a person with a disability under ORS 124.005(8)(b) and a vulnerable person under ORS 124.100(1)(e)(D).

25.

Hartford, without good cause and having no right to do so, has taken and retains money belonging to plaintiff, and has refused to take reasonable steps to return it or make any part of it available to him, thus holding plaintiff's money in constructive trust.

26.

As a result of defendant's violations of ORS 124.110, plaintiff suffered an economic loss of \$22,222.

27.

As a result of defendant's violation of ORS 124.110, plaintiff suffered non-economic damages of \$250,000.

28.

Pursuant to ORS 124.100(2)(c), plaintiff is entitled to an amount equal to three times his economic and non-economic damages.

29.

Pursuant to ORS 124.100(2)(c), plaintiff is entitled to reasonable attorney fees.

30.

Pursuant to ORS 124.100(6), plaintiff served a copy of this Complaint upon the Attorney General's office.

WHEREFORE, plaintiff prays for judgment as follows:

On his First Claim For Relief, for breach of contract, in the amount of \$22,222 in economic damages, extra-contractual consequential noneconomic damages of \$250,000, attorney fees as authorized by ORS 742.061, costs and disbursements.

On his Second Claim for Relief, for breach of the implied covenant of good faith and fair dealing, in the amount of \$22,222 in economic damages, extra-contractual consequential noneconomic damages of \$250,000, attorney fees as authorized by ORS 742.061, costs and disbursements.

On his Third Claim for Relief, for financial abuse of a vulnerable person under ORS 124.110, in the amount of \$22,222 in economic damages, non-economic damages of \$250,000, attorney fees as authorized by ORS 742.061, attorney fees and treble damages as authorized under ORS 124.100(2)(b)(c), costs and disbursements, and whatever further and other relief as the Court deems just and Proper.

Respectfully submitted this 22nd day of April, 2014.



Steven R. Smucker, OSB # 813795

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

JEFFREY FITZPATRICK

Plaintiff,

v.

HARTFORD LIFE AND ACCIDENT
INSURANCE COMPANY, a
Connecticut company,

Defendant.

Case No. 1404-05480

SUMMONS

To: Hartford Life and Accident Insurance Company
c/o CT Corporation System
388 State Street, Suite 420
Salem, OR 97301

You are hereby required to appear and defend the complaint filed against you in the above entitled action within thirty (30) days from the date of service of this summons upon you, and in case of your failure to appear, plaintiff will apply to the court for the relief demanded in the complaint.

NOTICE TO THE DEFENDANT: READ THESE PAPERS CAREFULLY!

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer." The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service upon the plaintiff.

If you have any questions, you should see an attorney immediately. If you need help in finding an attorney, you may contact the Oregon State Bar's Lawyer Referral Service online at www.oregonstatebar.org or by calling (503) 684-3763 in the Portland metropolitan area or toll-free in Oregon at (800) 452-7636.


STEVEN R. SMUCKER OSB# 813795
Attorney for Plaintiff

I certify that the foregoing is an exact and complete copy of the original summons in the above entitled action.


STEVEN R. SMUCKER OSB# 813795

Address at which papers in the above entitled action may be served by mail:

Steven R. Smucker, Attorney at Law
1200 Jackson Tower
806 SW Broadway
Portland, OR 97205
(503) 224-5077

Steven R. Smucker
Attorney at Law
1200 Jackson Tower
806 S.W. Broadway
Portland, OR 97205-3383

OSB# 813795
WA#18389
Tele: (503) 224-5077
Fax: (503) 299-6178
steve@portlandlawyer.com



**Service of Process
Transmittal**

04/29/2014

CT Log Number 524863656

TO: Daniela Bukowski-James
The Hartford
200 Hopmeadow Street, B1E
Weatogue, CT 06089

RE: Process Served In Oregon

FOR: Hartford Life and Accident Insurance Company (Domestic State: CT)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Jeffrey Fitzpatrick, Pltff. vs. Hartford Life and Accident Insurance Company, etc.,
Dft.

DOCUMENT(S) SERVED: Attachment, Summons, Complaint

COURT/AGENCY: Multnomah County Circuit Court, OR
Case # 140405420

NATURE OF ACTION: Insurance Litigation - Claim for policy benefits

ON WHOM PROCESS WAS SERVED: C T Corporation System, Salem, OR

DATE AND HOUR OF SERVICE: By Regular Mail on 04/29/2014 postmarked on 04/28/2014

JURISDICTION SERVED: Oregon

APPEARANCE OR ANSWER DUE: Within 30 days from the date of service

ATTORNEY(S) / SENDER(S): Steven R. Smucker
1200 Jackson Tower
806 S.W. Broadway
Portland, OR 97205-3383
503-224-5077

ACTION ITEMS: CT has retained the current log, Retain Date: 04/30/2014, Expected Purge Date:
05/05/2014
Image SOP
Email Notification, CTSOP Lawsuits (Not Specified)
SOPLawsuits.Law@thehartford.com

SIGNED: C T Corporation System
PER: Denise Whipper
ADDRESS: 388 State St., Suite 420
Salem, OR 97301
TELEPHONE: 503-566-6883

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**Service of Process
Transmittal**

04/29/2014

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TO: Daniela Bukowski-James
The Hartford
200 Hopmeadow Street, B1E
Weatogue, CT 06089

RE: Process Served in Oregon

FOR: Hartford Life and Accident Insurance Company (Domestic State: CT)

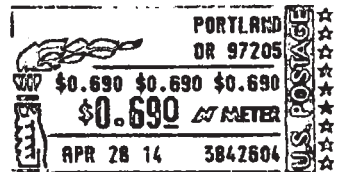
DOCKET HISTORY:

DOCUMENT(S) SERVED:	DATE AND HOUR OF SERVICE:	TO:	CT LOG NUMBER:
Summonses, Complaint	By Process Server on 04/28/2014	Daniela Bukowski-James The Hartford	524854547

Page 2 of 2 / BG

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1201 SW 12TH AVE. SUITE 300
PORTLAND, OR 97205



CT Corporation System, Registered Agent for
HARTFORD LIFE AND ACCIDENT INSURANCE COMPANY
388 State St., Suite 420
Salem, OR 97301

9730133581 0001



Date: 04/28/2014

To: CT Corporation System,
for HARTFORD LIFE AND ACCIDENT INSURANCE COMPANY

Attached is a true copy of the:

Summons and Complaint

Left With: Becky Radspinner

Address: 388 State St., Suite 420, Salem, OR 97301

Date Served: 04/28/2014

Time Served: 11:51 AM



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